

CHAPTER 243

FUEL TAX LAW

Section

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|----------|---|
| 243-1 | Definitions |
| 243-2 | Distributors to register and be licensed |
| 243-3 | Retail dealers, permits; certificates |
| 243-3.5 | Environmental response tax; uses |
| 243-4 | License taxes |
| 243-5 | County fuel tax |
| 243-6 | Fuel taxes, dispositions |
| 243-7 | Tax not applicable, when |
| 243-8 | License taxes payable monthly |
| 243-9 | Distributors, etc., to keep records |
| 243-10 | Statements and payments |
| 243-11 | Failure to make and file statements and making false statement unlawful |
| 243-12 | Procedure upon failure to file statement; penalties |
| 243-13 | Director empowered to make examinations, penalty, etc. |
| 243-14 | Assessments; limitation period; exceptions; extension by agreement |
| 243-14.5 | Appeals |
| 243-15 | Repealed |
| 243-16 | Rules and regulations |

§243-1 Definitions. Whenever used in this chapter:

“Aviation fuel” means and includes all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

“Barrel” means forty-two United States gallons of crude oil or petroleum product.

“Crude oil” means petroleum in an unrefined state or natural state, including condensates and natural gasoline.

“Director” means the director of finance of the State.

“Distributor” means and includes:

- (1) Every person who refines, manufactures, produces, or compounds liquid fuel in the State, and sells or uses the same therein;
- (2) Every person who imports or causes to be imported into the State any liquid fuel and sells it therein, whether in the original packages or containers in which it is imported or otherwise than in such original packages or containers, or who imports any such fuel for the person’s own use in the State;
- (3) Every person who acquires liquid fuel from a person not a licensed distributor and sells or uses it, whether in the original package or container in which it was imported (if imported), or otherwise than in such original package or container; and
- (4) Every person who acquires liquid fuel from a licensed distributor as a wholesaler thereof and sells or uses it.

“End user” means any person or government entity who acquires petroleum products for their own use and not for resale.

“Liquid fuel” or “fuel” means and includes all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power and includes liquefied petroleum gases, all distillates of and condensates from petroleum, natural gas, coal, coal tar, and vegetable ferments, such distillates and condensates being ordinarily

designated as a gasoline, naphtha, benzol, benzine, and alcohols so usable but not restricted to such designation. All aviation fuel which is sold for use in or used for airplanes is deemed to be "liquid fuel" or "fuel" whether or not coming within the definition contained in the foregoing sentence.

"Month" or "calendar month" means each full month of the calendar year; provided that whenever the books of any distributor in any county are kept on such a basis that its monthly records are made up on a basis other than a calendar month so that each business month of the distributor ends on some other day than the last day of the calendar month, and the distributor presents a sworn application to the department of taxation setting forth such facts and requesting that it be granted the privilege of making returns and paying the taxes and performing other duties required of it under this chapter upon the basis of such business month rather than a calendar month, the department shall in writing grant such privilege and thereupon, as to such distributor, the terms "month" or "calendar month" shall be deemed to mean and refer to such business month, and all returns and payments under this chapter shall be made upon the basis of such business month and all delinquencies and penalties shall attach and be calculated as of the last day of such business month.

"Person", except where the context or sense otherwise requires, means and includes individuals, firms, associations, corporations, trusts, estates, or partnerships.

"Petroleum product" means any liquid hydrocarbon at standard temperature and pressure that is the product of the fractionalization, distillation, or other refining or processing of crude oil.

"Retail dealer" means and includes a person who purchases liquid fuel from a licensed distributor, and sells the liquid fuel at retail. Only sales of liquid fuel for consumption or used by the purchaser, and not for resale, are sales at retail.

"Use", either as a noun or verb, and derivative expressions, means and includes distribution or other disposition of fuel, or any other use thereof, whether with or without compensation therefor. [L 1932 1st, c 19, §1; am L 1933, c 133, §1; RL 1935, §2010; am L Sp 1941, c 26, pt of §1; RL 1945, §5401; am L 1951, c 136, §1 and c 187, §1; RL 1955, §123-1; am L 1957, c 217, §1 and c 322, §1; am L Sp 1959 2d, c 1, §14, 16; am L 1963, c 114, §1; HRS §243-1; am imp L 1984, c 90, §1; gen ch 1985; am L 1991, c 55, §1; am L 1993, c 300, §3]

Case Notes

"Use" defined, 36 H. 170.

§243-2 Distributors to register and be licensed. Every distributor, and any person before becoming a distributor, shall register as such with the department of taxation on forms to be prescribed, prepared, and furnished by the department and the department shall issue to such distributor a license which shall be valid until revoked by the department as hereinafter provided. However, distributors who cannot legally be required by the State to so register and be licensed, or to perform the duties required of distributors by any other provisions of this chapter, shall be deemed to be excluded from the operation of such provisions. [L 1932 1st, c 19, §3; RL 1935, §2012; am L Sp 1941, c 26, pt of §1; RL 1945, §5403; RL 1955, §123-2; am L Sp 1959 2d, c 1, §16; HRS §243-2]

§243-3 Retail dealers, permits; certificates. (a) The certificate of a retail dealer as to the amount of the retail dealer's retail sales during the month, referred to in section 243-10, is of no validity unless at the time of making the certificate the retail dealer holds a permit from the department of taxation, which is then in effect. In order to obtain a permit, a retail dealer shall make an application to the department therefor, in such form as the department prescribes, and containing such information as the department requires.

(b) Any person who makes a false or fraudulent application or certificate or false statement in an application or certificate provided for by this chapter, with intent to defraud the State or to obtain, for a licensed distributor, an unauthorized credit, or who in any manner intentionally deceives or attempts to deceive the department in relation to an application or certificate provided for by this chapter, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(c) No permit shall be issued to a retail dealer unless the department is satisfied that:

- (1) The retail dealer, as to all of the liquid fuel purchased by the retail dealer from licensed distributors, is engaged exclusively in selling the same at retail, and is not using the liquid fuel for any other purpose; or
- (2) The retail dealer maintains on the premises a pump or pumps drawing on tanks into which fuel is delivered by licensed distributors and from which no liquid fuel is drawn by the retailer for any purpose other than the sale thereof at retail, and the retail dealer further maintains records showing the quantity of liquid fuel on hand in those tanks at the beginning and end of each month and the deliveries into those tanks made by licensed distributors during the month; or
- (3) The retail dealer maintains records by which retail sales of liquid fuel purchased from licensed distributors are segregated from all other sales or uses of liquid fuel, and further showing the quantity of liquid fuel on hand at the beginning and end of each month and the purchases of liquid fuel from licensed distributors during the month.

(d) Permits to retail dealers shall be issued on an annual basis and shall expire at the end of each calendar year. A fee of \$5 shall be charged for each permit or renewal thereof. Permits shall be numbered and each certificate made by a retail dealer holding a permit shall bear the same identifying number as the permit which the retail dealer holds.

(e) The department may revoke a permit upon the grounds hereinafter stated, after notice to the retail dealer holding the permit informing the retail dealer of the grounds of the proposed revocation and of the time and place at which a hearing will be held thereon. If the department finds, after the hearing, that there is good cause therefor it may revoke the permit. The permit may be revoked upon any of the following grounds:

- (1) A false or fraudulent application or false statement in an application;
- (2) The giving of a false or fraudulent certificate or a false statement in a certificate;
- (3) Failure to maintain the practices or records required by paragraphs (1), (2), or (3) of subsection (c), whichever is applicable as shown by the retail dealer's application for the permit;
- (4) Incomplete or inaccurate records when and if required to be kept.

(f) Each retail dealer who holds a permit issued by the department which remains in effect, may make a certificate showing the amount of retail sales, made by the retail dealer during the month, of liquid fuel purchased from a licensed distributor, and further may furnish such certificate to the licensed distributor from whom the retail dealer purchased the liquid fuel, for the retail dealer's use as provided, in section 243-10. [L 1957, c 322, §2; am L Sp 1959 2d, c 1, §16; Supp, §123-2.5; HRS §243-3; am imp L 1984, c 90, §1; gen ch 1985]

Cross References

Hearings, see chapter 91.

§243-3.5 Environmental response tax; uses. (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed at times provided in section 128D-2 a state environmental response tax of 5 cents on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product; provided that cents of the tax on each barrel shall be used pursuant to section 128D-2 to address concerns relating to drinking water. The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) Each distributor subject to the tax imposed by subsection (a), on or before the last day of each calendar month, shall file with the director, on forms prescribed, prepared, and furnished by the director, a return statement of the tax under this section for which the distributor is liable for the preceding month. The form and payment of the tax shall be transmitted to the department of taxation in the appropriate district.

(c) Notwithstanding section 248-8 to the contrary, the environmental response tax collected under this section shall be paid over to the director of finance for deposit into the environmental response revolving fund established by section 128D-2.

(d) Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe showing the total number of barrels and the fractional part of barrels of petroleum product sold by the distributor during any calendar month. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require. [L 1993, c 300, §2; am L 1994, c 205, §2]

Note

Subsection (a) printed as enacted.

§243-4 License taxes. (a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax hereby imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent.
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent.
- (3) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 16 cents state tax, and in addition thereto such amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5.
- (4) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 16 cents state tax, and in addition thereto such amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5.

- (5) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 16 cents state tax, and in addition thereto such amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5.
- (6) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 16 cents state tax, and in addition thereto such amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from such other evidence as the department may require, that liquid fuel other than fuel mentioned in paragraphs (1) and (2) is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall prescribe rules to administer such refunds.

(b) Every distributor of diesel oil shall, in addition to the tax required by subsection (a), pay a license tax to the department for each gallon of such diesel oil sold or used by the distributor for operating a motor vehicle or motor vehicles upon public highways of the State. The rates of the additional tax hereby imposed are as follows:

- (1) For each gallon of diesel oil sold or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, 15 cents state tax, and in addition thereto such amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5.
- (2) For each gallon of diesel oil sold or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, 15 cents state tax, and in addition thereto such amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5.
- (3) For each gallon of diesel oil sold or used in the county of Maui, or sold in any other county for ultimate use in the county of Maui, 15 cents state tax, and in addition thereto such amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5.
- (4) For each gallon of diesel oil sold or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, 15 cents state tax, and in addition thereto such amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in such form as the department shall prescribe, to the distributor, or the distributor who uses diesel oil signs such certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to(4) shall not be applicable. In the event a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall prescribe rules to administer the refunding of such taxes.

(c) The tax shall not be collected in respect to any liquefied petroleum gas, benzol, benzene, toluol, or xylol sold for use other than for operating internal combustion engines. With respect to these products, other than liquefied petroleum gas, the department by regulation shall provide for the reporting and payment of the tax and for the keeping of records in respect thereto, in such manner as to collect, for each gallon of such product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to liquefied petroleum gas, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any liquefied petroleum gas for operation of an internal combustion engine shall pay a license tax to the department of 1 cent for each gallon of such liquefied petroleum gas sold or used by the distributor.
- (2) Every distributor shall, in addition to the tax required under paragraph (1) of this subsection, pay a license tax to the department for each gallon of liquefied petroleum gas sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate equal to two-thirds of the rates applicable to diesel oil in subsection (b), rounded to the nearest cent, and the taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil.
- (3) If any user of liquefied petroleum gas furnishes to the distributor a certificate, in such form as the department shall prescribe, or the distributor who uses liquefied petroleum gas signs such certificate, certifying that the liquefied petroleum gas is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this section shall not be applicable; provided that no certificate shall be required if the liquefied petroleum gas is used for fuel and heating purposes in the home. In the event a certificate is not or cannot be furnished and the liquefied petroleum gas is in fact used for operating an internal combustion engine or operating a motor vehicle or

motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by such paragraphs. The department shall prescribe rules and regulations to administer the refunding of such taxes imposed.

(d) No tax shall be collected in respect to any liquid fuel, including diesel oil and liquefied petroleum gas, shown to the satisfaction of the department to have been sold for use in and actually delivered to, or sold in, the county of Kalawao. [L 1932 1st, c 19, §4; am L 1933, c 133, §2; am L 1937, c 189, §1; am L 1939, c 254, §1; am L Sp 1941, c 26, pt of §1; RL 1945, §5404; am L 1947, c 196, §2; am L 1949, c 360, §4; am L 1951, c 187, §2 and c 302, §1; am L 1953, cc 20, 197, 198, and 213, §1; am L 1955, cc 147, 148, 181, §1 and c 250, §2; RL 1955, §123-3; am L 1957, c 217, §2; am L Sp 1959 2d, c 1, §16; am L 1962, c 23, §1; HRS §243-4; am L 1969, c 215, §1; am L 1970, c 69, §1 and c 180, §18; am L 1971, c 51, §1 and 2; am L 1977, c 195, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1985, c 239, §4; am L 1986, c 54, §1; am L 1991, c 263, §11]

§243-5 County fuel tax. The amount of the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, respectively, shall be determined by resolution of the county or the city council of each county adopted in the manner provided by law relating to resolutions involving the expenditure of public money. The amount fixed by the resolution may be, per gallon, one or more cents or a fraction of a cent or both, or it may be zero. No such resolution shall be adopted until the county or the city council shall conduct a public hearing on the amount of tax proposed. Notice of such hearing shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of hearing. If the resolution is adopted, it shall take effect on the first day of the second month following the date of adoption of the resolution. The county or the city council shall notify the department of taxation of any county fuel tax changes within ten days after the resolution is adopted.

Until and unless otherwise provided by resolution adopted as above provided, the amount of the “county of Hawaii fuel tax” shall be for the period July 1, 1955, to June 30, 1957, 1 cent per gallon and thereafter zero, the amount of the “city and county of Honolulu fuel tax” shall be 2-1/2 cents per gallon, the amount of the “county of Maui fuel tax” shall be for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter 2 cents per gallon, and the amount of the “county of Kauai fuel tax” shall be for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter 2 cents per gallon. [L 1955, c 250, §3; RL 1955, §123-3.1; HRS §243-5; am L 1991, c 197, §1]

Revision Note

“County council” substituted for “board of supervisors” to conform to county charters.

§243-6 Fuel taxes, dispositions. The “city and county of Honolulu fuel tax” shall be paid by the department of taxation into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the city and county of Honolulu for deposit into the fund known as the “highway fund” created by section 249-18.

The “county of Kauai fuel tax” shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Kauai for deposit into the fund known as the “highway fund” created by section 249-18.

The “county of Hawaii fuel tax” shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Hawaii for deposit into the fund known as the “highway fund” created by section 249-18.

The “county of Maui fuel tax” collected on account of liquid fuel sold or used on the island of Lanai or sold elsewhere for ultimate use on the island of Lanai, shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the “highway fund” created by section 249-18, for expenditure on the island of Lanai. The “county of Maui fuel tax” collected on account of liquid fuel sold or used on the island of Molokai or sold elsewhere for ultimate use on the island of Molokai, shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the “highway fund” created by section 249-18, for expenditure on the island of Molokai. The remainder of the “county of Maui fuel tax” shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the “highway fund” created by section 249-18.

Each of the foregoing taxes shall be expended for the following purposes, for the island for which the tax revenue is specially indicated, or, if none, for the county for which the tax revenue is indicated:

- (1) For payment of interest on and redemption of any bonds duly issued or sold on or after July 1, 1951, under chapter 47 for the financing or aiding in financing the construction of county highway tunnels, approach roads thereto, and highways. Such payments of interest and principal on the bonds when due, shall be first charges on such moneys so deposited in the fund.

- (2) For acquisition, designing, construction, reconstruction, improvement, repair, and maintenance of county main and general thoroughfares, highways, and other streets, street lights, storm drains, and bridges, including costs of new land therefor, when expenditures for the foregoing purposes cannot be financed under state-federal aid projects.
- (3) In the case of the city and county of Honolulu, for payment of the city and county's share in an improvement district initiated by the city and county for an improvement listed in (2) above which is permitted to be constructed in the city and county.
- (4) For the construction of county highway tunnels, overpasses, underpasses, and bridges, where such improvement cannot be made under state-federal aid projects.
- (5) For purposes and functions connected with county traffic control and preservation of safety upon the public highways and streets.
- (6) For purposes and functions in connection with mass transit.
- (7) For acquisition, design, construction, improvement, repair, and maintenance of bikeways.
- (8) No expenditure shall be made, out of the revenues paid into any such fund, which will jeopardize federal aid for highway construction. [L 1955, c 250, §6; RL 1955, §123-3.2; am L 1957, c 250, §1 and c 276, §1; am L 1959, c 74, §1; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1; HRS §243-6; am L 1970, c 197, §1; am L 1977, c 68, §1]

Cross References

Special funds, see also §248-8.

§243-7 Tax not applicable, when. This chapter requiring the payment of license fees shall not be held or construed to apply to fuel imported into the State in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State, nor to any such fuel exported or sold to the government of the United States or any department thereof for official use of the government, nor to any fuel exported or sold to another licensed distributor; but every distributor shall be required to report such imports, exports, and sales as provided by this chapter and in such detail as the department of taxation shall require. [L 1932 1st, c 19, §10; RL 1935, §2019; am L Sp 1941, c 26, pt of §1; RL 1945, §5405; am L 1951, c 136, §2; RL 1955, §123-4; am L Sp 1959 2d, c 1, §16; HRS §243-7]

Case Notes

Applied to airlines. 36 H. 170.

§243-8 License taxes payable monthly. License taxes imposed by this chapter shall be paid in monthly installments to the department of taxation. [L 1932 1st, c 19, §5; RL 1935, §2014; am L Sp 1941, c 26, pt of §1; RL 1945, §5407; RL 1955, §123-5; am L Sp 1959 2d, c 1, §16; HRS §243-8]

§243-9 Distributors, etc., to keep records. Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe, showing separately for each county and for the islands of Lanai and Molokai, within which or whereon fuel is sold or used during each month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of such fuel imported by the distributor, or acquired by the distributor from persons not licensed distributors, and sold or used by the distributor, and if for ultimate use in another county or on either island, the name of that county or island; and
- (3) The total number of gallons of such fuel sold to the United States or any department or agency thereof or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel so sold or used from the imposition of the tax provided for by this chapter. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require. [L 1932 1st, c 19, §6; RL 1935, §2015; am L Sp 1941, c 26, pt of §1; RL 1945, §5408; am L 1947, c 196, §3; am L 1949, c 373, §2; am L 1953, c 20, §6; RL 1955, §123-6; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §6; HRS §243-9; am imp L 1984, c 90, §1; gen ch 1985]

Case Notes

Cited: 36 H. 170, 175.

§243-10 Statements and payments. Each distributor and each person subject to section 243-4(b), on or before the last day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of fuel imported by the distributor or person and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (3) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (4) The total number of gallons of fuel sold by the distributor or person to the United States or any department or agency thereof, or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;
- (5) The total number of gallons of fuel on hand in the distributor's or person's possession in all of the counties and on the island of Lanai and on the island of Molokai at the beginning of the month, the total number of gallons thereof refined, manufactured, produced, compounded by the distributor or person, or acquired from persons not subject to the tax on such transaction, or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, or imported during the month, and the total number of gallons thereof on hand in the distributor's or person's possession at the end of the month; and
- (6) Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by the distributor or person during the month, as the department of taxation by rule shall prescribe.

At the time of submitting the foregoing report to the department, each distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All taxes payable for any month shall be delinquent after the expiration of the last day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records. [L 1932 1st, c 19, §7; am L 1933, c 133, §3; RL 1935, §2016; am L 1937, c 189, §2; am L Sp 1941, c 26, pt of §1; am L 1943, c 4; RL 1945, §5409; am L 1947, c 196, §4; am L 1949, c 373, §3; am L 1953, c 20, §7 and c 125, pt of §9; am L 1955, c 250, §4; RL 1955, §123-7; am L 1957, c 322, §3; am L Sp 1959 2d, c 1, §16; am L 1965, c 169, §1; HRS §243-10; am imp L 1984, c 90, §1; gen ch 1985; am L 1991, c 55, §2]

Case Notes

Cited: 36 H. 170, 175.

§243-11 Failure to make and file statements and making false statement unlawful. It shall be unlawful for any distributor, or any other person, to fail, neglect, or refuse to make and file any statement required by this chapter in the manner or within the time therein provided or to make any such statement which is false in any particular. [L 1932 1st, c 19, §8; RL 1935, §2017; am L Sp 1941, c 26, pt of §1; RL 1945, §5410; RL 1955, §123-8; HRS §243-11]

§243-12 Procedure upon failure to file statement; penalties. If any distributor or other person fails, neglects, or refuses to file any statement or report as herein provided, the director of taxation, immediately after the required time for such filing has expired, may proceed to inform oneself as best the director may regarding the matters and things required to be set forth in such statement and from such information as the director is able to obtain shall:

- (1) Make a statement showing such matters and things; and
- (2) Determine and fix the amount of license tax due from the distributor or other person for such month, and proceed to collect the amount of the license tax with penalties and interest added thereto pursuant to section 231-39. Upon request of the director, the attorney general (or the attorney general's deputies, including the county attorneys and public prosecutor) shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect any tax herein imposed which is delinquent and all penalties and interest accrued, or any other appropriate action at law or otherwise to enforce this chapter.

[L 1932 1st, c 19, §9; RL 1935, §2018; am L Sp 1941, c 26, pt of §1; RL 1945, §5411; am L 1953, c 125, pt of §9; RL 1955, §123-9; am L Sp 1959 2d, c 1, §16; HRS §243-12; am imp L 1984, c 90, §1; gen ch 1985; gen ch 1985]

§243-13 Director empowered to make examinations, penalty, etc. The director of taxation and the director's authorized assistants may subpoena witnesses, compel the production of books, papers, and other records, administer oaths, examine books and records, and hear and take such evidence in relation to any matters within the director's jurisdiction, and upon which it is necessary or proper that the director be informed, under this chapter, as in the director's discretion the director may deem proper. The circuit courts shall have power, upon request of the director or any such assistant, to enforce by proper contempt proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, papers, and records. False swearing under oath as to any material fact at any hearing held under this section shall be subject to chapter 710, part V. If the examination discloses that any reports of distributors or other persons theretofore filed with the director by the distributors or other persons, pursuant to the requirements of this chapter, have shown incorrectly the number of gallons of fuel sold or used, or the tax accruing thereon, so that any additional license taxes are due and payable under this chapter, the director shall proceed to collect such unpaid license taxes. [L 1932 1st, c 19, §11; RL 1935, §2020; am L Sp 1941, c 26, pt of §1; RL 1945, §5212; RL 1955, §123-10; am L Sp 1959 2d, c 1, §16; HRS §243-13; am imp L 1984, c 90, §1; gen ch 1985; am L 1991, c 55, §3]

§243-14 Assessments; limitation period; exceptions; extension by agreement. (a) In any case of computation of the tax by the director of taxation, as provided in sections 243-12 and 243-13, the amount of the tax shall be assessed against the person liable therefor, and notice shall be given to the person of the amount of tax so assessed with penalties and interest. The notice may be given by mail, addressed to the person assessed at the person's last known residence or place of business.

(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the three-year period. As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at anytime; provided that in the case of a statement claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(c) which shall apply to the tax imposed by this chapter.

(d) Where, before the expiration of the time prescribed in this section for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer have consented in writing to its assessment or levy after the expiration date, the tax or liability may be assessed or levied, or the overpayment, if any, may be credited at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by a subsequent agreement in writing made before the expiration of the period previously agreed upon. [L Sp 1941, c 26, §1(12); RL 1945, §5413; RL 1955, §123-11; am L Sp 1959 2d, c 1, §16; HRS §243-14; gen ch 1985; am L 1991, c 55, §4; am L 1993, c 257, §4; am L 1994, c 19, §3]

[§243-14.5] Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232. [L 1992, c 147, §1]

§243-15 REPEALED. L 1995, c 92, §28.

§243-16 Rules and regulations. Subject to chapter 91, the director of taxation shall have power to make rules and regulations relating to matters of procedure in the administration of this chapter and the manner and forms of records to be kept by distributors, and to prescribe standard forms of statements to be filed by distributors or other persons, affidavits, and any other statements or other written data required to be filed or furnished under this chapter. The rules and regulations shall have the force and effect of law. [L 1932 1st, c 19, §14; RL 1935, §2023; am L Sp 1941, c 26, pt of §1; RL 1945, §5415; RL 1955, §123-13; am L 1965, c 96, §85; HRS §243-16]